

Local Roots >> Global Reach

***Umowy IP - umowa licencyjna i
oprogramowanie jako usługa
(„software as a service” – SaaS)”***

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Agenda

1. IP Agreements – introduction
2. License Agreement
3. Software as a Service (SaaS) Agreements
4. Issues that are common for both agreements:
 - a) Warranties and warranties disclaimer
 - c) Limitation of Liability
 - d) Indemnification
 - e) Insurance
 - f) Confidentiality

IP Agreements - introduction

- a) The U.S. is a party to several IP treaties, and thus differences are not that visible
- b) Differences exist mostly on the contract law arena
- c) IP is mostly regulated by federal law
- d) License v. transfer of rights
- e) Licensor (*Licencjodawca*) v. Licensee (*Licencjobiorca*)

License Agreement

1. Types of Software License Agreements:

- Non-negotiated, in a shrinkwrap or clickwrap form (mass-marketed, off-the-shelf software)
- Negotiated;
- Referred to as an end user license agreement (EULA).

2. Scope of the License Grant:

- The licensed software (description, ownership), and related documentation;
- The licensed party or parties (affiliates, subsidiaries?), authorized users;
- The licensed rights and permitted uses (licensee's internal business operations or wider);
- The extent of exclusivity (territory product or service type, distribution channels);
- Whether the licensee can grant sublicenses (territory, number of tiers);
- Any additional requirements or limitations:
 - ✓ Use Restrictions (derivative works, improvements; reverse engineering, decompiling, disassembling)
 - ✓ Open Source Software
 - ✓ Territory (Export Administration Regulations (EAR) for computer software exports)
 - ✓ Software Location and Installation

License Agreement

3. Delivery:

- The format and media in which the software is to be delivered.
- The manner of software delivery (for example, mail, email, electronic download, or courier).
- The location where the software is to be delivered.
- Whether the licensor is to install and configure the software and, if so, any related charges

4. Acceptance

- Affirmative acceptance or
- Deemed acceptance.

5. Proprietary Rights:

- Reservation of Rights
- Acknowledgment of Ownership

License Agreement

6. Consideration and Payment Terms:

- License Fees
- Fee Increases
- Invoicing and Payments
- Most Favored Pricing or Licensee

7. Term and termination, term renewal

Software as a Service (SaaS) Agreements

1. Common Characteristics:

- The service software is not installed or stored on the customer's computer systems
- The SaaS services and infrastructure are managed by or for the SaaS provider and shared by multiple customers
- Service customization is limited
- The provider maintains the service software and provides service support subject to service levels
- Service fees accrue and are payable on a recurring, periodic basis
- Shift of priorities; the top priorities for cloud-based contracts are:
 - ✓ Service availability and performance;
 - ✓ Service levels
 - ✓ Data Security

2. SaaS Benefits:

- A quick start-up, and convenient and on-demand service with little or no required software installation
- Expanded capacity for: data collection; storage; and processing
- Greater scalability and elasticity, allowing the customer to rapidly expand and contract its use of the service without incurring unnecessary hardware upgrade or expansion costs.
- Global reach through multi-location and multi-device access to the SaaS service.
- Access to the provider's professional data management services

3. SaaS Risks:

- The limitations of the internet or other networks over which SaaS services are provided
- The customer's lack of control over:
 - ✓ The levels of service performance, availability, and support actually delivered;
 - ✓ the privacy and security of customer data processed and stored by the SaaS provider, including the potential inadvertent exchange or commingling of multiple customers' data;
 - ✓ the location of the SaaS provider's or its subcontractors' servers, databases, and other service infrastructure
- The potential disruptive effect and costs of transferring the customer's operations and data to and from the provider's SaaS systems

Software as a Service (SaaS) Agreements

1. Parties: the SaaS vendor (provider) and the SaaS user (customer or subscriber)
2. The SaaS services:
 - Hosting of its software solutions (hosted services).
 - Performing services to support the hosted services (support services).
3. SaaS Access Grant or License:
 - Description of the SaaS services;
 - The number of authorized users or other defined extent of permitted use
 - The non-exclusive nature of the grant
 - The means for accessing and using the services.
 - The territory.
 - The term.
 - Whether sublicensing, assigning, or other transfers are permissible.
 - Non-production use.
 - Any purpose, use, market, or field-of-use restrictions
4. Use Restrictions. Prohibition to:
 - Rent, lease, lend, sell, sublicense, transfer, distribute, or otherwise make the SaaS services available to any third party, except as expressly permitted by the agreement.
 - Use the SaaS services in any manner or for any purpose that violates any applicable law.
 - Access or seek to reverse engineer the service software code.

Software as a Service (SaaS) Agreements

5. Service Level Requirements:

- Ensure that the customer can rely on the services.
- Provide appropriate remedies for service interruptions and other service failures.
- Provide incentives for the provider to be diligent and timely in remedying service errors.

6. Service Availability Requirements

7. Service Support Requirements

8. Service Credits and Other Remedies for Failure to Meet Service Level Requirements

Dziękuję za Państwa uwagę!



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